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Contract # 069016**STATE OF UTAH CONTRACT**

1. **CONTRACTING PARTIES:** This contract is between the following agency of the State of Utah:
Department: **Utah Department of Transportation** Agency Code: **810** Division: **Construction Traffic Management**, referred to as (STATE), and the following CONTRACTOR:

RH & Associates, Inc.
20280 N. 59th Avenue, Suite 115-631
Glendale, AZ 85308

LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Government Agency

Contact Person Renee L. Hoekstra
Federal Tax ID# 86-0710238

Phone (623) 266-3943
Vendor # 94110A

Email rhpartnering@earthlink.net
Commodity Code: 9529000000

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide:

DEVELOPMENT PARTNERING TRAINING PROGRAM – PHASE 1:

The training will include the Definition of Partnering, The Way We Do Business, Partnering Process; pre-construction meeting, setting up and preparing for the workshop, the workshop elements, role of the facilitator (internal and external) and will include training the participants on the process, the importance of the process and how to use the process effectively including the need for follow-up:

3. **PROCUREMENT:** This contract is entered into as a result of the procurement process on SS05255 a pre-approved sole source authorization (from the Division of Purchasing).
4. **CONTRACT PERIOD:** Effective date 07 July 2005 Termination date 06 June 2007 unless terminated early or extended in accordance with the terms and conditions of this contract.
5. **CONTRACT COSTS:** CONTRACTOR will be paid a maximum of \$ 45,000.00 for costs authorized by this contract.
6. **ATTACHMENT A:** Division of Purchasing's Standard Terms and Conditions
ATTACHMENT B: Scope of Work and Pricing
ATTACHMENT C: Special Terms and Conditions
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to SS05255 dated 06/30/05.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

Renee L. Hoekstra 7/28/05
Contractor's signature Date

Renee L. Hoekstra
Type or Print Name and Title

STATE

Kelvin L. Thacker 19 July 05
Kelvin L. Thacker, Procurement Services Manager Date
Rosella Muth 8/15/05
Director, Division of Finance Date
PROCESSED BY
DIVISION OF FINANCE
AUG 16 2005
Director, Division of Finance Date

Denice McCarthy
Agency Contact Person

(801) 965- 4761
Telephone Number

(801) 965-4073
Fax Number

dmccarthy@utah.gov
Email Address

(Revision 08/26/2003)

SEP 16 2005

entered

ATTACHMENT A

STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees third party, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (30) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on

the contractor's skill or judgment to consider it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

ATTACHMENT B
SCOPE OF WORK AND PRICING

Project Tasks and Payment Deliverables		Prices of the deliverables
Phase 1 - Development of Partnering training. Development of partnering training to include defining partnering, process training, interdiction to facilitation skills, and maintenance and monitoring process training.	80 Hours @ \$125.00 per hour	\$10,000.00
Development of Handouts & Workshop Materials	20 Hours @ \$125.00 per hour	\$2,500.00
Train the Trainer Session	1-day workshop	\$3,000.00
Phase 1 – Section 1 Training. The training portion will be delivered over an 8 – 10 month period and to approximately 30 participants per workshop in 16, 5 hour sessions.	5 – 5 Hour Sessions @ \$1755.00 per session	\$8,775.00
Phase 1 – Section 2 Training.	5 – 5 Hour Sessions @ \$1755.00 per Session	\$8,775.00
Phase 1 – Section 3 Training.	6 – 5 Hour Sessions @ \$1755.00 per Session	\$10,530.00
Total Phase 1 – Development & Training		\$43,580.00
Phase 2 Development (Optional) – Development of partnering training, including presentation and handouts, to include; problem solving, issue resolution, conflict management, negotiation training and communication skills.	40 Hours @ \$125/ hr. & 1 day train the trainer @ \$3,000.	\$8,000.00
Phase 2 Training (Optional) - The training portion will be delivered over an 8 – 10 month period and to approximately 30 participants per workshop in 16, 5 hour sessions.	16 – 5 Hour Sessions @ \$1755.00 per Session	\$28,080.00
Total Phase 2 – Development & Training (Optional)		\$36,080.00

ATTACHMENT C
SPECIAL TERMS AND CONDITIONS

1. **INVOICING** CONTRACTOR shall submit invoices to STATE Productivity Coordinator:

Jeffery Saddler, Productivity Coordinator
Utah Department of Transportation
Construction Division
Box 148220
4501 South 2700 West
Salt Lake City, Utah 84104-148220

The contract number shall appear on all invoices and correspondence.

Billings must be itemized, showing hours worked by each staff member with a clear definition of the project phase or task the work relates to. All billings must correlate to the project progress reports and be submitted in a timely manner.

Upon approval of the invoice by the STATE Productivity Coordinator, payments will be processed. STATE will remit payment by mail.

2. **PAYMENTS** Progress payments will be made. CONTRACTOR shall render periodic invoices for the services rendered to STATE. STATE shall process the entire amount of such invoices (excluding only "Disputed Amounts", as defined below) within thirty (30) days from the date of receipt of each invoice. Any amounts remaining unpaid for more than forty-five (45) days after that shall be subject to interest thereon equal to one and one-half percent (1.5%) per month. In addition, if any non-Disputed Amount owed by STATE to CONTRACTOR is not paid within forty-five (45) days of the date of the invoice or if any Disputed Amount agreed or determined to be owed to CONTRACTOR is not paid within ten (10) days from the date of such agreement or determination, CONTRACTOR may, at its option, upon five (5) business days written notice, immediately suspend CONTRACTOR's obligations to STATE until payment is received, and/or terminate this Contract for breach. Payment shall be considered credited to the account of STATE when received by CONTRACTOR. As used herein, "Disputed Amounts" shall mean invoice amounts (other than any amount for any applicable minimum charge) that are subject to a bona fide dispute raised by STATE in a writing received by CONTRACTOR within twenty (20) days of the date of receipt of an invoice therefore and with respect to which STATE is making reasonable, diligent and good faith efforts to resolve.
3. **FINAL PAYMENT** Final payment, including any amounts retained, shall be made 60 days after final sign off for each task and deliverable, such as file translation, custom computer programming or project records, and system test materials and documentation have been received and accepted by the STATE Productivity Coordinator as accurate and complete.
4. **PRICE GUARANTEES** The CONTRACTOR agrees the prices bid on services in this contract shall be guaranteed through completion of the project.
5. **NOTIFICATION** Notice given under this Contract shall be written, or sent by facsimile or other electronic means. Written notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Facsimile or other electronic notice must be followed within three (3) days by written notice. All notices shall be effective when first received at the following addresses:

If to CONTRACTOR:

RH & Associates, Inc.
Renee L. Hoekstra
20280 N, 59th Avenue Suite 115-631
Glendale, AZ 85308

with copies to:

If to STATE:

Utah Department of Transportation
Denice McCarthy, Purchasing Agent
Box 148260
4501 S 2700 W
Salt Lake City, UT

with copies to:

Jeffery Saddler, Productivity Coordinator
Utah Department of Transportation
Construction Division
Box 148220
4501 South 2700 West
Salt Lake City, Utah 84104-148220

14. OWNERSHIP OF WORK PRODUCT CONTRACTOR agrees that any and all work product delivered under this Contract shall be the sole and exclusive property of STATE.

CONTRACTOR further agrees that STATE is and shall be vested with all rights, title, and interests, including patent, copyright, trade secret, and trademark rights in CONTRACTOR's work product produced under this Contract. CONTRACTOR shall not encumber said work product in any way or act inconsistent with STATE's title thereto.

CONTRACTOR is required to execute all papers including patent applications, inventing assignments, and copyright assignments, and otherwise shall assist STATE at STATE's expense to protect in the STATE's rights, and other interests in CONTRACTOR's work product expressly granted to STATE under this Contract. All services, information, computer elements, programs, reports and other deliverables, which may be created and patented or copyrighted under any resulting contract, are the property of STATE, and shall not be used or released by the CONTRACTOR or any other person, except with prior written permission of STATE. If any material including hardware or software, which is currently held, patented or copyrighted, becomes a functioning part of the product delivered, STATE must be notified in advance in writing. STATE will give written approval to proceed.

All documents and data pertaining to work required by this contract will be the property of the STATE and must be delivered to the STATE within ten (10) working days after termination of the contract, regardless of the reason for termination; and without restriction or limitation to their further use. Cost to all the above items will be considered as included in the basic contract compensation of the work as described.

15. INTELLECTUAL PROPERTY INDEMNITY Upon STATE's written notification to CONTRACTOR, CONTRACTOR shall defend, at its expense, any claim against STATE alleging the services, or any part thereof, infringe on any patent, copyright, trademark, trade secret, mask work, or other intellectual property interest in any country, and shall pay all costs and damages awarded. If an injunction against STATE's use, sale, lease, license, other distribution of the services or product, or any part thereof, results from such a claim (or, if STATE reasonably believes such an injunction is likely), CONTRACTOR shall, at its expense, (and in addition to the CONTRACTOR's other obligations hereunder) and as STATE requests, obtain for STATE the right to continue using, selling, leasing, licensing, or otherwise non-infringing but functionally equivalent. The provisions of this section shall not apply to any claim for infringement resulting solely from CONTRACTOR's compliance with STATE's detailed design specifications, where provided.

16. DEVELOPMENTS CONTRACTOR agrees that information gathered from callers regarding STATE's goods or services and portions of scripts created that are STATE specific and that are not general or generic in nature (collectively, "STATE Data") are and shall remain the sole and exclusive property of STATE, free and clear of any and all claims of CONTRACTOR. STATE agrees that anything (excepting only STATE Data) created or developed in whole or in part by CONTRACTOR (whether or not created or developed while, or in the process of, providing any services to or for STATE), including without limitation any and all programming, Internet related software or processes, interactive voice response related software or processes, software modifications and customizations, application program interfaces, telephone marketing related software, telephone marketing or business methods, statistical research and analysis, call disposition data, training methods or training materials or other telephone marketing related information, methods or processes (collectively, "CONTRACTOR Works"), are and shall remain the sole and exclusive property of CONTRACTOR, free and clear of any and all claims of STATE.

All STATE Data shall be delivered to STATE and all CONTRACTOR Works shall be delivered to CONTRACTOR as requested or upon termination or completion of this Contract, whichever is earlier. Nothing in this Section shall preclude the parties from later agreeing in a writing signed by authorized officers of the parties to transfer to STATE some interest in a specific work product created or developed under this Contract.

17. FACILITIES AND MATERIALS The CONTRACTOR and all personnel working under this contract shall not acquire, borrow, copy, or use in any manner software, documentation, or data on any STATE data processing facility for use other than as required to complete this contract.
18. SUSPENSION OF WORK Should the STATE desire to suspend the work, but not terminate the contract; this will be done by written confirmation. The work may be reinstated upon thirty (30) days advance written notice from the STATE. The STATE understands any such suspension of the work may affect both the time of performance and price to complete the work when reinstated.
19. ASSIGNMENT OF CONTRACT The CONTRACTOR shall not sublet, assign or transfer any part of this contract without prior written approval from STATE. Neither shall the provision of monies due under this contract be assignable without prior written approval of STATE.
20. LIMITATION OF LIABILITY Notwithstanding anything in this Contract or otherwise to the contrary (except only as set forth in the next sentence): (i) neither STATE nor CONTRACTOR shall be liable to the other party or to any third party for any lost profits; any loss of business; any cost of replacement services; or any indirect, consequential, incidental or special losses or damages of any kind or nature whatsoever, howsoever caused; and (ii) the sole and exclusive remedy

of CONTRACTOR and of STATE any claim, loss or damages in any way stated to, or arising out of, this Contract or any services provided or anticipated to be provided shall be limited to such party's actual, direct damages (which are not excluded under clause (i) of this sentence); provided, however, that the aggregate amount of all such actual, direct damages that arise out of, or relate to, any and all events and occurrences shall not under any circumstance exceed the following amount ("Cap Amount"): an amount equal to the product of three (3) times the average amount of the monthly fees actually paid by STATE to CONTRACTOR under this Contract (excluding any charges and costs passed through by CONTRACTOR). The limitations expressed in the immediately preceding sentence shall not apply to or limit STATE's liability for any claims for payment of the full invoiced amounts that might be due to CONTRACTOR or of any applicable minimum charges; the Cap Amount shall not apply to or limit either party's liability for actual, direct damages for any claims of a breach of its confidentiality obligations under this Contract or for any claims arising out of, in connection with or resulting from such party's misuse or appropriation of the other party's proprietary systems (software or otherwise) or for any claims for indemnification under this Contract; and the limitations expressed in the immediately preceding sentence shall not preclude either party from seeking injunctive relief. Any cause of action or claim brought by either party against the other party for breach of this Contract, for tortious conduct or for any other cause or claim, must be commenced within two (2) years after such cause or claim has accrued or shall thereafter be completely and forever barred.

20. **FAILURE TO COMPLETE** At any time the CONTRACTOR determines the contract work cannot be completed within the specified time or budget, the CONTRACTOR must notify STATE in writing, immediately. The STATE may, at its sole discretion, extend the contract by written modification.
21. **NON-PERFORMANCE** If, at any time, CONTRACTOR fails to demonstrate the required expertise (as represented in the CONTRACTOR's proposal) or fails to meet acceptable standards of performance, the STATE reserves the right to require the CONTRACTOR to replace individual(s) with a competent individual(s). The STATE Productivity Coordinator must approve this replacement. If the CONTRACTOR fails to accomplish project objectives or meet schedule commitments established in meetings with the STATE Productivity Coordinator, this contract may be canceled immediately. If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 30 days prior notice to the CONTRACTOR.
22. **TERMINATION** The occurrence of any of the following constitutes a breach by CONTRACTOR unless corrected by CONTRACTOR within thirty-(30)days.

CONTRACTOR failure to perform services and/or deliver product on time.

Services performed and/or product delivered by CONTRACTOR does not conform with the terms set forth in this Contract.

CONTRACTOR fails to perform any material provision of this Contract.

CONTRACTOR assigns this Contract, or any obligation or rights hereunder. (The term "assign" to include, without limitation, a transfer of majority.)

CONTRACTOR sells or merges with a third-party (not a parent or subsidiary company) without the prior written consent of STATE.

CONTRACTOR becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of CONTRACTOR's assets.

CONTRACTOR shall cure any of the above breaches and notify STATE of such cure within two (2) weeks from receipt of a notice to cure from STATE. If CONTRACTOR fails to cure, STATE may terminate this Contract by giving CONTRACTOR written notice. STATE shall have no liability to CONTRACTOR thereafter except for payment of any balance due for conforming services performed prior to the date of STATE's notice to cure. STATE may, at its option and without regard to CONTRACTOR's ability to cure, terminate this Contract for cause in the event of any second or subsequent instances of the above breaches by CONTRACTOR.

23. **TERMINATION FOR OTHER THAN NON-PERFORMANCE** If the STATE terminates for reasons other than non-performance, the CONTRACTOR is relieved of any performance responsibilities on the project, and the withheld performance guarantee amount will be released by the STATE. The estimated completion of projects may overlap in new fiscal years. (STATE fiscal year is from July 1, to June 30). If funding is not allocated for individual projects, which overlap into the new fiscal year, the project will be automatically terminated on June 30th without written notice to contract.
24. **DISPUTE RESOLUTION PROCEDURE** Any dispute or disagreement arising between STATE and CONTRACTOR shall be resolved according to the following dispute resolution procedure. First, such dispute shall be addressed to each party's Program Manager for discussion and attempted resolution. If any such dispute cannot be mutually resolved by

such program managers within five (5) business days, then such dispute shall be immediately referred to the parties' respective business unit vice president or Senior Leader for discussion and resolution. If such parties fail to resolve the dispute within ten (10) business days, then such dispute shall be referred to the parties' respective chief operating officers for discussion and attempted resolution. If parties cannot mutually resolve such dispute within ten (10) business days, then Section 30. FORUM FOR ENFORCEMENT applies.

25. **FORUM FOR ENFORCEMENT** Any controversy or claim arising out of, in connection with, or relating to this Contract or a breach thereof which has not been resolved in accordance with Section 29. DISPUTE RESOLUTION PROCEDURE (above) shall be settled by arbitration under rules of the American Arbitration Association, Utah Board. The Statutes of the State of Utah shall govern the arbitration proceeding, and the proceeding shall be held in Salt Lake City, Utah. Anything to the contrary contained in the above mentioned rules and statutes notwithstanding, the parties consent that any papers, notices, or process necessary or proper for the institution or continuance of, or relating to any arbitration proceeding, or for the confirmation of an award and entry of judgment on any award made, including appeals in connection with any judgment or award, may be served on each of the parties by registered mail addressed to the party at the principal office of the party or by personal service on the party in or without the above mentioned state. The parties hereby recognize and consent to the above mentioned arbitration association's jurisdiction over each and every one of them. Pending settlement of the final decision by the court, CONTRACTOR shall proceed diligently with the performance of the Contract in accordance with STATE's direction.

Division of Purchasing Tracking
#SS05255

4-5 (rev 8/03)

Sole Source Procurement is appropriate only if a single supplier or if it otherwise qualifies under 1

Administrative Code R33-3-401.

ALL SOLE SOURCE REQUESTS OVER \$1,000 MUST BE PRE-APPROVED BY STATE PURCHASING.

NOTE: THIS WORD DOCUMENT IS DESIGNED TO ALLOW THE REQUESTOR TO COMPLETE EACH SECTION WITH AS MUCH INFORMATION AS APPROPRIATE TO FULLY RESPOND.

It is anticipated the procurement will result in a (check one):

- ☒ Agency Contract email this form to johndavis@utah.gov prior to contract negotiations. No RX is required. Requested term of contract (include any renewal options):
one year w/1(0)yr renewal
- ☐ Purchase Order Enter RX into Finet, insert the RX Number _____, email this form to the appropriate State Purchasing Agent and send a copy of the quotation from the vendor.

Department Requesting Authorization: Transportation Division: Construction
Contact Person and Title: R & H Associates - Renee L Hoekstra CVS
email address: Denise McCarthy
Phone number: (623) -266-3943

Product/service to be purchased: UDOT - Custom Partnering Training on Construction Projects

Cost: \$45,000.00

Recommended Supplier: RH & Associates

Contact Person: Renee L Hoekstra

email address:

Phone number: (623) -266-3943

Address including zip code: 20280 North 59th Avenue, Suit 115-631 Glendale, Arizona 85308

Finet vendor number:

Complete the following if no Finet number exists. Federal Tax ID# (TIN) or Social Security #:

(must be 9 digit number) (If submitting a Social Security #, the persons' name must appear as it does on Social Security card.)

Type of Supplier(check one): ☐ corporation ☐ medical provider (all types) ☐ proprietorship/individual
☒ partnership ☐ government ☐ other

Sole source request is based on which of the following (check all that apply):

- ☐ Compatibility of equipment/service (please complete sections A and B)
- ☐ Trial or Testing (please complete section C)
- ☐ Equipment/service is only available from a single supplier in the U.S. (please complete section A)
- ☒ Compatibility of professional services (please complete section A)

Interdiction to the Scope of work

In July 2004, Executive leaders from UDOT and the Association General Contractor of Utah, got together to improve the process and approach of partnering on construction projects. A 12 person Partnering Task Force was formed which includes members of the AGC and UDOT. This task force was given the charge of determining the current level of partnering and what it would take to make partnering the way we do business.

A survey was sent out in August 2004 to members of the Contracting Community as well as UDOT Region Construction personnel. The results of the survey helped to determine the current level of partnering and where improvements could be made. The survey results clearly showed that several major differences were present between UDOT and the Contractors, and that all individuals who work on an UDOT owned construction project would require training to get them to understand and perform partnering on the same level.

Training will be conducted statewide from August 2005 through March 2006. It is the goal of the Task Force to have all phase I training completed by the start of the 2006 construction season. Those who will be required to attend training are all UDOT personnel who are involved in the construction of a project, contractors, sub-contractors, major suppliers, local governments and MPO's and any other individuals who actively work on UDOT owned construction contracts.

Section A. GENERAL INFORMATION

1. What is unique about this product/service to justify a sole source?

Renee Hoekstra, RH & Associates, has focused on the impact of Transportation's partnering for Construction project around the nation from several angles. A study conducted in the area Renee Hoekstra, RH & Associates work is the noted standout. No other firms were found to have the same level of expertise or background in this area of research and training.

Renee Hoekstra, RH & Associates, expertise is in providing Partnering facilitation, team facilitation public facilitation and training for public and private sector clients in the Transportation area. This design and construction experience and knowledge includes a variety experience in the planning and design of construction programs and projects. Including alternative delivery method approaches. Their ability to provide excellent services is based on these varied experiences in the engineering/architecture and construction industries. Participant evaluations of their workshops indicates that this knowledge of the industry bring credibility to the workshop and increase its success.

RH & Associates, has worked successfully with ADOT and CALTRANS in developing and supplying training in their partnering programs. Renee Hoekstra has over 13 years experience working with several DOT's and Contractors in development and training in the partnering field.

RH & Associates, has extensive experience working with UDOT, FHWA, NEPA, FEMA and various other DOT's across the country. They have provided these services for the past 17 years and have facilitated Partnering workshops for over 500 project/teams. They have extensive experience providing team/partnering training for the construction Industry Institute and are a roster member of the U.S. Institute for Environmental conflict resolution, which includes the FHWA roster for transportation related projects. They are also a Certified Value Specialist (CVS). Overall they have over twenty years of experience in the architecture, Civil Engineering and construction industry. We believe this experience in the industry provides a better understanding of the needs of public agencies, private owners, contractors, designers and the public.

RH & Associates (RHA). is a **unique** consulting firm specializing in Partnering and Value Engineering, and they bring to UDOT a successful track record of team development and maintenance of transportation projects over the past years. RHA is a certified WBE/DBE/SBE with various State Agencies around the nation and are currently in the certification process with UDOT.

RH & Associates has facilitated over 600 workshops throughout the nation. They provide all services needed to design, implement and evaluate a Partnering program. They assist with a comprehensive program from start-up to closeout. Services include:

RH & Associates has provided services nationally for projects which include:

- Inter-governmental agreements between the Federal government, states, counties and/or cities
- Projects funded by a third party agency, such as FHWA, NEPA, FAA, BOR, USCOE and FEMA
- Project administered by an agency for a separate user
- Public Involvement sessions
- Internal Partnering to increase the effectiveness within an agency
- Educational facilities where staff and community are part of the team
- Environmentally sensitive water and wastewater projects
- International wastewater projects
- Design-build project
- Construction Manager at Risk projects
- Job Order Contracting projects

2. **Could the product/service be reasonably modified to allow for competition?** Due to the uniqueness of RH & Associates expertise and training, it is a major concern that any other facilitator would require a substantial time dollar requirement to develop a program that would not impede the progress and direction already made by the Partnering Task Force. Due to the short time frame, their already established expertise in the field and their existing knowledge of UDOT's construction operations, RH & Associates would be the best facilitator to be able deliver this product. RH & Associates also has local employees who will be able to deliver the required training at a reduced cost, other facilitators are located out of state and may have no local employees. The submitted cost by RH & Associates for the development and training that would be completed for the 2006 construction season is \$45,000..

RH & Associates has been working with UDOT and it's contracting community for several years in taking partnering to the highest level. RH & Associates knows the direction that we are heading and is committed to helping us get there. There are no other firms that have shown UDOT this sort of dedication in the past. All other facilitators contacted have indicated that it would require a huge time commitment on their part to get up to speed on what we're doing, and at a much higher price. All of the facilitators that UDOT has contacted are either out of business, changed their contact information or did not show interest in this project.

The direction that UDOT is heading in it's partnering effort is to gain the mutual trust and respect of our contracting counterparts, by better communication and discussion of all issues before they become claims. By taking this approach, we know that the cost of the projects will go down considerably in reduced claims and faster decisions being made on the project. Other facilitators that we have worked with in the past focus on building relationships between the parties of the contract and did not have the expertise in focusing on the issues. This is why we feel RH & Associates is the best firm to help develop and train both our employees and the contractors in this huge partnering effort.

2. **Explain the market research performed to make the sole source recommendation?**

This is a very small segment of the Construction industry, a few phone calls provide the same results. Based on the reputation RH & Associates has built while working with other DOTs nationwide and their work that's been published in this related area, RH & Associates has been the only suggestion.

There are no other firms that have shown UDOT this amount of interest or expertise. All other facilitators contacted have indicated that it would require a huge time commitment on their part to get up to speed on what we're doing, and at a much higher price. All of the facilitators that UDOT has contacted are either out of business, changed their contact information or have not shown interest in this project.

RH & Associates has been working with UDOT and it's contracting community for several years in taking partnering to the highest level. RH & Associates knows the direction that we are heading and is committed to helping us get there.

For the reasons outlined above, I would like to request that a sole source contract be approved for RH & Associates to perform the development and training that is needed to update UDOT and Contracting personnel on Partnering.

3. **List the names of suppliers contacted, contact person and a summary of their response?**

All of the facilitators that UDOT has contacted are either out of business, changed their contact information or have not shown interest in this project.

Other facilitators who were contacted to help in this effort were Pinnacle Leadership Group located in Phoenix who indicated lack of interest in this type of effort, and Jacques and Associates who are not allowed to conduct partnering facilitation until 2006 due to a no compete clause with another firm who does work for UDOT.

5. **Complete disclosure must be included with this request if the requestor has any personal, financial or fiduciary relationship with the recommended supplier.**


I have confirmed UDOT/ RH & Associates has no personal, financial or fiduciary in this project

Requested by:

Approved:

Denise McCarthy

6/13/05


6/20/05

